Granted that the evidence admitted in the principal case was proper evidence to go to the jury when sufficiently authenticated, the ruling was correct, for no question was made as to its authentication. There would seem to be no greater difficulty in verifying the process of reproducing sounds by means of a wax record, than in verifying the process of reproducing images by means of a sensitized plate. Any kind of demonstrative evidence must be relevant to the issue and calculated to aid the jury, and not confuse or unduly prejudice them, and the determination of these questions is almost entirely within the discretion of the trial judge. *Jameson* v. *Weld,* 93 Me. 345; *Healey* v. *Bartlett,* 73 N. H. 110.

EXTRAORDINARY LEGAL REMEDY—QUO WARRANTO.—Quo warranto was brought by the state against the corporation for the purpose of procuring a decree enjoining the corporation from acting as such on the ground of nullity of its organization. *Held,* well brought when brought against the corporation alone. It is not necessary that the individual corporators or officers be made defendants, and process served upon them as such. *State ex rel. Coleman, Atty Gen.* v. *Inner Belt Ry. Co. et al.* (1906), — Kan. —, 87 Pac. Rep. 696.

The Supreme Court decreed the corporation null and void, and ousted the corporation from the exercise of corporate power. It is rather an unusual proceeding to attack the existence of a corporation by bringing the action against the corporation, in its corporate name, for by so pleading, the existence of the corporation is admitted. The same result would follow from joining the corporation, in a suit against the individual corporators or officers. DILLON, MUNICIPAL CORPORATIONS, § 895; ANGELL AND AMES, CORPORATIONS, § 756; *People* v. *R. R. Co.* (1836), 15 Wend. 113; *People* v. *Supervisors* (1879), 41 Mich. 647; *People* v. *Cincinnati Gas Co.* (1868), 18 Ohio St. 262; *State* v. *Com. Bank* (1857), 33 Miss. 474; *Draining Company* v. *State* (1873), 43 Ind. 236; *State* v. *Jenkins* (1887), 25 Mo. App. 484; *State* v. *Independent School District of Dallas Centre* (1876), 44 Ohio 227; *Ewing* v. *State* (1891), 81 Tex. 172; *Territory* v. *Armstrong* (1889), 6 Dak. 226; *State* v. *Webb* (1893), 97 Ala. 111; *People* v. *James* (1896), 39 N. Y. Supp. 313. In *People* v. *Montecito Water Co et al.* (1893), 97 Cal. 276, the holding is but slightly different from the decisions cited above, and the conditions in this case are a shade different. Here the court says, the corporation de facto is a necessary party, and making it such with an averment that it is a corporation de facto, but not de jure, does not estop the state from questioning its corporate character. The court cites only California cases to support itself in this holding. A distinction must be made between the principal case, and those cases holding that an information to enforce forfeiture against a corporation once legally formed, is properly filed against the corporate body, and not against the individual members. *People* v. *Railroad* (1836), 15 Wend. 113. However, there are some cases which support the court in the principal case in deciding as it does. And in *People* v. *Bank of Hudson,* 6 Cowen, 217, the court said directly, "It is not an affirmation that the defendants are a corporation, to bring the action against the corporation as such, but that by the

name of the president, directors, and company of the bank of Hudson, they have done the acts in the information alleged." An examination of the cases will uphold the old rule, that an action to prevent the exercise of a franchise is well brought against the corporation. But a quo warranto to oust the corporation, must be brought against the individuals claiming to be a corporation; otherwise the pleading, on its face, admits the existence of the corporation, and therefore the existence cannot be questioned. The Kansas court is not in accord with the weight of authority. It does not recognize this technicality in pleading, that the effect of bringing quo warranto against the corporate body alone, admits the existence thereof, and may not later be taken advantage of by the state in claiming illegality, fraud, or non-compliance with the law in organization.

GUARANTY—OFFER—ACCEPTANCE.—One M. was appointed the agent of the plaintiff in the handling and sale of its machinery, etc., and on the back of the agency contract, was the following: "In consideration of the appointment or retention of the above party as agent, etc., etc. * * * the undersigned jointly and severally guaranty the fulfillment by the said agent of all his duties or obligations growing out of that relation, etc., etc. * * * A mere offer to guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice." S. D. Rev. Code, 1897. No consideration passed from the guarantee to the guarantor, and no notice was sent. M. defaulted and owes a large amount of money to the plaintiff. Defendants when called upon to pay and to fulfill the guaranty, claimed that there was no such contract, and that they were not liable because no notice had been sent them, and that they only extended a mere offer of guaranty. In action by plaintiff it is *held,* that above was a mere offer of guaranty and would not become effective without notice. *William Deering & Co.* v. *Mortell* (1906), — S. D. —, 110 N. W. Rep. 86.

The court was clearly right in the conclusion that it reaches. The distinction between an offer of guaranty and an absolute guaranty, is made in the South Dakota Code, but the court would undoubtedly be of the same opinion without the code provision. Indeed the distinction has long existed, and is well settled, but new facts arise which require interpretation. JUSTICE GRAY, in *Davis Sewing Machine Co.* v. *Richards,* 115 U. S. 327, lays down the means of ascertaining whether a given case is merely an offer of guaranty, or an absolute guaranty. He says, "Those rules may be summed up as follows: A contract of guaranty, like every other contract, can only be made by the mutual assent of the parties. If the guaranty is signed by the guarantor at the request of the other party, or if the latter's agreement to accept is contemporaneous with the guaranty, or if the receipt from him of a valuable consideration, however small, is acknowledged in the guaranty, the mutual assent is proved, and the delivery of the guaranty to him or for his use completes the contract." Meeting of minds may be evidenced by other modes than the formal giving of notice. Where consideration of the guaranty moves to the guarantor. *Doud* v. *Bank,* 54 Fed. 846. An absolute guaranty is in